



Comparison of Protected Disclosures Legislation ROI v GB

We continue our series of comparison between Great Britain and the Republic of Ireland. In this article we will summarise the key differences in whistleblowing protections in Great Britain (GB) and Ireland. This is an area which has developed over the last decade, offering greater protections to those who report and imposing greater onus on employers to implement proper reporting procedures within their organisations.

Protected Disclosures



	GB	ROI
 Statutory Protection	Employment Rights Act 1996 (ERA) as amended by the Public Interest Disclosure Act 1998 (PIDA)	Protected Disclosure Act, 2014 as amended by the Protected Disclosures (Amendment) Act 2022
 In scope Employers	All employers.	All employers See Reporting Obligations below.
 What is a protected disclosure?	<p>A protected disclosure is a disclosure of information by a worker (a “qualifying disclosure”) which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following—</p> <p>(a) that a criminal offence has been committed, is being committed or is likely to be committed,</p>	<p>A protected disclosure is a disclosure of “relevant information” which in the reasonable belief of the worker tends to show a “relevant wrongdoing.”</p> <p>Relevant wrongdoings for the purposes of the Act—</p> <p>(a) that an offence has been, is being or is likely to be committed,</p>



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(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged, or

(f) that information tending to show any matter falling within any one of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

The Employment Rights Bill (expected to take effect in Autumn 2026) will add the disclosure of sexual harassment to this list, whether such harassment has occurred, is occurring or is likely to occur.

The disclosure must be made to one of the following:

- the worker's employer
- the person responsible for the relevant failure (e.g. a worker could make a disclosure to the client of their employer if they reasonably believe the client is responsible for the conduct concerned)
- the worker's own legal adviser in the course of obtaining legal advice

(b) that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker's contract of employment or other contract whereby the worker undertakes to do or perform personally any work or services,

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur,

(d) that the health or safety of any individual has been, is being or is likely to be endangered,

(e) that the environment has been, is being or is likely to be damaged,

(f) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur,

(g) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement

(h) that a breach has occurred, is occurring or is likely to occur, or

(i) that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed or an attempt has been, is being or is likely to be made to conceal or destroy such information.

'Breach' was added after the implementation of the Protected



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- government ministers (if the worker is employed by a statutory body e.g. an NHS body)
- a person/body on a statutory list of prescribed persons (provided the worker reasonably believes that both: the wrongdoing falls within that person's remit; and the information disclosed and any allegation contained within it are substantially true).

A worker may also make a protected disclosure to a person who is not on the above list, for example to the police or the media, but only if the worker:

- reasonably believes that the information, or any allegation contained within it, is substantially true;
- is not making the disclosure for personal gain; and
- has previously disclosed the issue to their employer, or reasonably believes they will be subject to a detriment if they do so, or that material evidence will be concealed or destroyed.

A disclosure can be oral or in writing.

Disclosures Amendment Act 2022 which is an act or omission that is unlawful and to which the following areas apply: public procurement, financial services, products and markets and prevention of money laundering and terrorist financing, product safety and compliance, transport safety, protection of the environment, radiation protection and nuclear safety, food and feed safety and animal health and welfare, public health, consumer protection and protection of privacy and personal data, and security of network and information systems, EU law that effects the financial interests of the EU and relate to the internal market, EU competition and state aid rules and internal market rules on corporate tax.

The disclosure should be made to one of the following:

- the worker's employer
- a prescribed person who by reason of the nature of their responsibilities or functions, appear appropriate to be recipients of disclosures
- Office of the Protected Disclosures Commissioner (OPDC)

A disclosure can be oral or in writing. It can also be retrospective.



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Exceptions

A disclosure of information is not a qualifying disclosure if the person making the disclosure commits an offence by making it.

A disclosure of information in respect of which a claim to legal professional privilege (or, in Scotland, to confidentiality as between client and professional legal adviser) could be maintained in legal proceedings is not a qualifying disclosure if it is made by a person to whom the information had been disclosed in the course of obtaining legal advice.

A matter is not a relevant wrongdoing if it is a matter which it is the function of the worker or the worker's employer to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of the employer.

A matter concerning interpersonal grievances exclusively affecting a reporting person, for example, namely, grievances about interpersonal conflicts between the reporting person and another worker.

A disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a protected disclosure if it is made by a person to whom the information was disclosed in the course of obtaining legal advice.



Jurisdiction

It is immaterial whether the relevant failure occurred, occurs or would occur in the United Kingdom or elsewhere, and whether the law applying to it is that of the United Kingdom or of any other country or territory.

It is immaterial whether a relevant wrongdoing occurred, occurs or would occur in the State or elsewhere and whether the law applying to it is that of the State or that of any other country or territory.



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Who is protected?

Employees, workers, agency workers, trainees, a person providing general medical services, general dental services, general ophthalmic services or pharmaceutical services and those on work experience.

External job applicants are not protected, except applicants for jobs in the NHS.

Special provisions apply to others such as Crown employees and police officers.

Full time, part time, temporary employees,...contractors, consultants, agency staff, former employees, apprentices and those on work experience, shareholders, directors, volunteers, job applications or those involved in pre-contract negotiations.



Anonymous Disclosures

Disclosures can be made anonymously, but this may affect the ability to investigate the concern or provide legal protection to the whistleblower.

Disclosures can be made anonymously, but this may affect the ability to investigate the concern or provide legal protection to the whistleblower.

No statutory obligation for employer to address anonymous disclosures but employer can choose to do so.

A worker who makes a disclosure by way of an anonymous report and who is subsequently identified and penalised for having made the disclosure shall be entitled to protection under the Act.



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Protections available

Protection is provided against detriment and dismissal in GB.

Detriment is defined as any form of disadvantage or mistreatment, by an employer. This can encompass a range of issues like unfair treatment, disciplinary action, or even being denied opportunities for promotion or training. Where the claimant is a worker, “detriment” can include dismissal.

Employees are also protected from dismissal for whistleblowing. The relevant claim would be one for automatic unfair dismissal. Unlike ordinary unfair dismissal, employees are not required to have two years’ service to bring this claim.

Protection is provided against penalisation in Ireland.

Penalisation is defined as any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report and causes or may cause unjustified detriment to a worker and, in particular, includes—

- (a) suspension, lay-off or dismissal,
- (b) demotion, loss of opportunity for promotion or withholding of promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) the imposition or administering of any discipline, reprimand or other penalty (including a financial penalty),
- (e) coercion, intimidation, harassment or ostracism,
- (f) discrimination, disadvantage or unfair treatment,
- (g) injury, damage or loss,
- (h) threat of reprisal,
- (i) withholding of training,
- (j) a negative performance assessment or employment reference,
- (k) failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate



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expectation that he or she would be offered permanent employment,

(l) failure to renew or early termination of a temporary employment contract,

(m) harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income,

(n) blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry,

(o) early termination or cancellation of a contract for goods or services,

(p) cancellation of a licence or permit, and

(q) psychiatric or medical referrals.

There is no service requirement for unfair dismissal claims arising from a protected disclosure.



Burden of Proof

The burden of proof in a detriment claim initially lies with the whistleblower to demonstrate they made a protected disclosure and suffered a detriment.

Once the whistleblower establishes this, the burden shifts to the employer to prove that the detrimental action was

The burden of proof rests with the employer who must prove that adverse actions against a whistleblower were not linked to their disclosures.

Application of the "but for" test. But for making the protected disclosure the penalisation would not have occurred.



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not linked to the whistleblowing and was justified on other grounds.

In an automatic unfair dismissal claim, it is for the employee to demonstrate that they made a protected disclosure and that they were dismissed. Where the employee has two years' service, the burden is on the employer to show the reason for dismissal. However, where the employee does not have two years' service, the employee must show they were dismissed for making a protected disclosure.

There is no requirement to put in place formal whistleblowing channels (save in certain regulated sectors such as insurance and financial services); however, disclosures are only protected if made through one of the six permissible methods described above (including by raising by any method within the employer's organization)

No time frame or statutory requirement to produce feedback regarding the report or action taken (save in certain regulated sectors such as insurance and financial services).

No requirement for specific reporting to a national authority and no such GB authority currently exists, although disclosures may be made to "prescribed persons". Note that "external disclosure"

Internal reporting lines should be established in all public sector bodies and also in private entities with 50 employees or more. These channels must also provide for acknowledgement (within 7 days), follow-up and feedback on such complaints (within 3 months which can be extended to 6 months in certain justified cases). A designated person must be appointed to address protected disclosures.

If reporting internally, the employee must reasonably believe there is a relevant wrongdoing.

External reporting lines (including Office of the Protected Disclosures Commissioner) include reporting to a designated or prescribed person or a third party.



Reporting Obligations



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is the last part of call of the six permissible methods of disclosure and is subject to strict conditions (see “What is a protected disclosure?” above).

In order to report to a prescribed person the employee must reasonably believe there is a relevant wrongdoing and the allegation to be substantially true.

In order to report to a third party the employee must reasonably believe there is a relevant wrongdoing and the allegation to be substantially true. The disclosure must also not be made for personal gain and the making of the disclosure is in all the circumstances reasonable and one of the following:

- Reasonable belief of penalisation if disclosure made to the employer
- Reasonable belief evidence will be destroyed/concealed
- No action was taken on foot of a previous disclosure by worker
- Matter is of an exceptionally serious nature

Civil:

Interim relief

Interim relief can be awarded if an employee claims that their dismissal is automatically unfair. The Employment Tribunal (“ET”) can order the employer to reinstate the employee, re-engage them in another job, or simply continue paying their wages and benefits until the final hearing.

Civil:

Circuit Court

Circuit Court application for an injunction to prevent alleged penalisation. The Court can order re-instatement, re- engagement, or continuation of the employee’s contract including payment of salary and benefits pending the outcome of a claim for unfair dismissal.



Remedies



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ET claim

A worker or employee may bring a claim to the ET for having been subjected to a detriment, and an employee may claim for automatic unfair dismissal.

If the ET finds the complaint to be well founded, it can apply the following sanctions:

- 1) in detriment claims – a declaration, plus an award of such compensation as it believes is just and equitable;
- 2) in unfair dismissal claims, reinstatement or reengagement (though these are rare in practice), and compensation. (Note that in whistleblowing cases the statutory cap on unfair dismissal compensation does not apply.)

Criminal:

There are no specific criminal consequences for employers in respect of whistleblowing by workers in GB. However, workers reporting a criminal offence to the authorities may be making a protected disclosure, and if the authorities investigate and find evidence of criminal conduct by the employer then criminal proceedings may follow (see the “what is a protected disclosure” section above for when a disclosure to the police will be protected).

Workplace Relations Commission

Bring a claim to the Workplace Relations Commission (“WRC”) for unfair dismissal or penalisation under the Protected Disclosures Act.

If the WRC finds the complaint to be well founded, they can apply the following sanctions:

- 1) Direction to employer to take a specified course of action;
- 2) Compensation of such amount as they consider just and equitable having regard to all the circumstances, but not exceeding 260 weeks’ (5 years) remuneration in respect of the employee’s employment.
- 3) The award may be reduced by 25% if it transpires that the investigation into the relevant wrongdoing was not the main or sole motivation for making the protected disclosure or where the worker has been found to knowingly report false information.
- 4) Reengagement or reinstatement (in dismissal cases)

No service requirement for unfair dismissal claims arising from a protected disclosure.

Criminal:

Fines up to €250,000 or imprisonment for up to two years to persons who hinder or attempt to hinder a worker from making a report.



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Statute

Employment Tribunal

A complaint must be made to the employment tribunal within

(a) 3 months from the date of the act or failure to act to which the complaint relates or, where that act or failure is part of a series of similar acts or failures, the last of them,

or

(b) within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented before the end of that period of three months.

Circuit Court

An employee who claims to have suffered penalisation wholly or mainly for having made a protected disclosure may apply to the Circuit Court for interim relief within 21 days immediately following the date of the last instance of penalisation or such longer period as the Court may allow.

Workplace Relations Commission

A claim for penalisation or unfair dismissal may also be brought before the Workplace Relations Commission within 6 months of the penalisation complained of. Where there is 'reasonable cause' a Complainant can seek an extension of an additional 6 months.

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